OVERWHELMING and the Sadlowskis would get a new hearing/rehearing. The petition was denied. The Sadlowskis then filed a Petition for New Hearing En Banc as such petition was expected to be given to members of the full court. The petition was denied. The Sadlowskis discovered that both petitions were reviewed by a single judge. The Sadlowskis then filed a Petition for Appeal of Single Judge decisions. That petition was denied on August 23, 2005.

In the petition for appeal of single judge decisions, argument was made as to the points listed earlier on why the ruling should be reversed on the search warrant matter and the following on recall/removal of mandate.

The U.S. District Court in Rhode Island, a court of the First Circuit, granted a resentencing hearing to three individuals and had hearings in June of 2005, from sentences set in Sept. 2002. This is a time of 2 years 9 months after the sentences were set. The three persons who were granted resentencing hearings were: Vincent Cianci Jr., Frank Corrente, and Richard Autiello. These individuals were allowed to have a ruling by the U.S. Supreme Court in another case applied to their case, going back over 2 and ½ years. This is of a longer time duration than Sadlowskis' request.

When the U.S. Supreme Court rules on a particular case, the court makes points in the opinion that have applicability to a wider collection of matters. In the Groh v Ramirez case, the U.S. Supreme Court ruled that a search warrant given to a person of the premises that is being searched at the time of the search and where the given search warrant failed to describe the person or things to be seized makes the search warrant invalid. Justice Stevens delivered the Opinion and within stated "The search warrant is plainly invalid".

As such, this reveals that an invalid search warrant given to the person whose premises is being searched at the time of the search is a Fourth Amendment violation and

unconstitutional. The existence of probable cause and other documents elsewhere do not save the invalid search warrant. In Sadlowskis' case, the document labeled as search warrant given to the Sadlowskis at the time of the search of their residence was never seen by the court and never issued by the court and was a different form. As such, it was grossly invalid, worst than the situation in the Groh v Ramirez case.

As nonmovants of the motion for summary judgment, per Rule 56 on Summary Judgment, the court must accept the facts provided by the Sadlowskis a presented in testimony of Jocelyn Sadlowski and Suzanne Sadlowski at the motion for summary judgment hearing, the depositions of Jocelyn Sadlowski and Suzanne Sadlowski and the affidavit of Jocelyn Sadlowski, that reveal that an invalid search warrant was served in hand at Sadlowskis' residence. As such, summary judgment must be reversed. Thus, the search conducted at the Sadlowski residence was unconstitutional and a violation of the Fourth Amendment.

The critical point is that a valid search warrant must be given to the person whose residence is being searched during the time of the search.

The U.S. Court of Appeals for the First Circuit needs to follow the lead of the U.S. Supreme Court and find that an invalid search warrant (for Sadlowskis, one never seen by the court and never issued by the court and being of different format, etc.) that is given to a person, whose premises is being searched, during the time of the search is a Fourth Amendment violation.

The Sadlowskis were baffled as to why the U.S. Court of Appeals for the First Circuit denied a new/rehearing. No specifics were mentioned. The points made in the Groh v Ramirez case clearly demonstrate that the ruling of the U.S. Court of Appeals for the First Circuit must be overturned.

REASONS FOR GRANTING THE PETITION

- Protect citizens from the unlawful intrusion of their homes by law enforcement;
- Preservation of Fourth Amendment rights;
- That a search warrant served in hand at a residence must be a valid search warrant;
- That each U.S. Court of Appeals is to honor the points made in cases by other U.S. Courts of Appeals pursuant to Rule 10 of U.S. Supreme Court Rules;
- That each U.S. Court of Appeals is to honor the points made in cases by the U.S. Supreme Court;
- Cause the lower courts to properly follow Rule 56 on Summary Judgment.

CONCLUSION

The petition for a writ of certiorari should be granted and the ruling of the U.S. Court of Appeals for the First Circuit overturned on the search warrant matter. The case should be remanded to the U.S. Court of Appeals for the First Circuit for resolution of the collateral estoppel matter of the appeal that the appeals court did not address.

Respectfully submitted,

Petitioner

Michael T. Sadlowski

Michael T. Sadlowski

Jocelyn M. Sadlowski

Jocelyn M. Sadlowski

APPENDIX A

ORDER DENYING PETITION FOR APPEAL OF SINGLE JUDGE DECISIONS

United States Court of Appeals
For the First Circuit

No. 02-1365

MICHAEL SADLOWSKI, ET AL.,
Plaintiffs, Appellants.

v.

LOUIS BENOIT,
Defendant, Appellee.

Before

Boudin, Chief Judge,
Torruella and Howard, Circuit Judges

ORDER OF COURT

Entered: August 23, 2005

Plaintiffs-appellants have filed a petition for review of the single judge orders entered May 12, 2005, denying their "Petition for New Hearing" and June 17, 2005, denying their "Petition for New Hearing En Banc." For the reasons stated therein, this panel concurs with the decisions denying petitioners' requests for new hearings.

So ordered.

By the Court:

Richard Cushing Donovan, Clerk

MARGARET CARTER

By: _____

Chief Deputy Clerk

cc: Messrs. Sadlowski, Pfaff, Ms. Sadlowski & Ms. Sadlowski

APPENDIX B

ORDER (BY SINGLE JUDGE) DENYING PETITION FOR NEW HEARING

United States Court of Appeals

For the First Circuit

No. 02-1365

MICHAEL SADLOWSKI, ET AL.,
Plaintiffs, Appellants,

v.

LOUIS BENOIT,
Defendant, Appellee.

ORDER OF COURT

Entered: May 12, 2005

Plaintiffs-appellants seek rehearing in this case, arguing that Groh v. Ramirez, et al., 540 U.S. 551 (2004), is grounds for reversal of this court's March 31, 2003 judgment. Mandate issued in this case on May 15, 2003. The United States Supreme Court denied certiorari on November 17, 2003. Because mandate has issued in this case, we no longer have jurisdiction over it. See Boston and Maine Corp. v. Town of Hampton, 7 F.3d 281, 282 (1st Cir. 1993). Moreover, "[e]ven if [an] authority to recall a mandate still exists," id., appellants have not made the requisite showing of exceptional circumstances to justify our exercise of such authority. The appellants' reliance upon Groh, a case concerning a warrant which "did not describe the items to be seized," Groh, 540 U. S. at 558, is insufficient to show that the decision challenged here was" demonstrably wrong." Boston and Maine Corp., 7 F.3d at 283.

The "Petition for New Hearing," construed as a

motion to recall mandate, is denied.

By the Court:

Richard Cushing Donovan, Clerk

MARGARET CARTER

By: _____
Chief Deputy Clerk.

Messrs. Sadlowski, Pfaff, Ms. Sadlowski & Ms. Sadlowski

APPENDIX C

ORDER (BY SINGLE JUDGE) DENYING PETITION FOR NEW HEARING *EN BANC*

United States Court of Appeals

For the First Circuit

No. 02-1365

MICHAEL SADLOWSKI, ET AL.,
Plaintiffs, Appellants,

v.

LOUIS BENOIT,
Defendant, Appellee.

ORDER OF COURT

Entered: June 17, 2005

Mandate issued in this case on May 15, 2003, after appellants' original petition for rehearing and rehearing en banc were denied. The present petition is untimely and relief is unavailable for the same reasons stated in our 5/12/05 order denying petitioners' "Petition for New Hearing." The Petition for New Hearing En Banc is hereby returned to the filers and the Clerk's Office is directed not to accept any further filings under this case number as the case is closed.

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

cc: Messrs. Sadlowski, Pfaff, Ms. Sadlowski & Ms. Sadlowski

APPENDIX D

RULING OF UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT ON APPEAL FROM DISTRICT COURT

United States Court of Appeals

For the First Circuit

No. 02-1365

MICHAEL SADLOWSKI, ET AL.,
Plaintiffs, Appellants,

v.

LOUIS BENOIT,
Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Nathaniel M Gorton, U.S. District Judge]

Before
Campbell and Stahl,
Senior Circuit Judges,
and Lynch, Circuit Judge.

Michael Sadlowski, Jocelyn Sadlowski and Suzanne Sadlowski on brief pro see

Douglas I. Louison, Stephen C. Pfaff and Merrick. Louison & Costello on brief for appellee.

March 31, 2003

Per Curiam. Plaintiffs-appellants Michael, Jocelyn and Suzanne Sadlowski appeal from the district court's grant of summary judgment dismissing their federal claims pursuant to 42 U.S.C. §1983, against defendant Louis Benoit and remanding their state law claims to state court. "We review a summary judgment de novo, viewing the record in the light most favorable to the nonmoving party to determine whether there exists a genuine issue of material fact." Muniz Cortes v. Intermedics, Inc., 229 F.3d 12 (1st Cir. 2000).

In their brief, appellants base their challenge to the grant of summary judgment on two alleged errors by the district court: 1) in ruling that plaintiffs' Fourth Amendment claim based on a search pursuant to an invalid warrant was precluded under the doctrine of collateral estoppel, and 2) in granting summary judgment sua sponte on the claim contained in ¶ 6 of the amended complaint (threatening manner of the search).

I. Claim That Search Pursuant to Invalid Warrant Violated Plaintiffs' Fourth Amendment Rights

The district court held that the claim that plaintiffs' Fourth Amendment rights were violated by defendant's search of their residence pursuant to an invalid warrant was precluded by a determination by the Leominster District Court, denying for "insufficient evidence" plaintiffs' application for issuance of a criminal complaint against defendant Louis Benoit, pursuant to Mass. Gen. Laws ch. 218 §§ 32 - 35A. On appeal, the Sadlowskis argue that the court erred in applying issue preclusion because 1) the issues were not identical, 2) the parties were not the same, and 3) plaintiffs did not receive a "full and fair hearing" in state court.

We need not resolve the problematic question of

whether issue preclusion applies here, because we affirm on the alternative ground that plaintiffs have failed to meet their burden of showing a genuine issue of material fact as to the claim deemed precluded. See Four Corners serv. Station, Inc. v. Mobil Oil Corp., 51 F.3d 306, 314 (1st Cir. 1995) (appellate court is free to affirm summary judgment on any ground supported by the record and fairly presented).

"Once a defendant moves for summary judgment and places in issue the question of whether the plaintiff's case is supported by sufficient evidence, the plaintiff must establish the existence of a factual controversy that is both genuine and material. To carry this burden, the plaintiff must 'affirmatively point to specific facts that demonstrate the existence of an authentic dispute.'" Melanson v. Browning-Ferris Indus., Inc., 281 F. 3d 272, 276 (1st Cir. 2002).

In opposing summary judgment, plaintiffs relied upon deposition testimony and affidavits of Jocelyn and Suzanne Sadlowski. At best, that evidence established a genuine factual controversy as to: 1) whether the warrant presented to plaintiffs at the time of the search was signed by a magistrate and had Jeffrey Sadlowski's name on it, and 2) whether it differed in format from the warrant authorizing the search of their home which was on file with the Leominster District Court. However, neither factual controversy is material to plaintiffs' Fourth Amendment claim.

The only specific facts set forth by plaintiffs in support of their claim are Jocelyn and Suzanne Sadlowski's recollections that the warrant they were shown at the time of the search (the "Served Warrant") was unsigned, did not contain Jeffrey Sadlowski's name as the occupant, and was different in format from the one they viewed several days later on file with the Leominster District Court (the "Filed Warrant"). They also rely upon evidence indicating that the Filed Warrant contained folds inconsistent with how

defendant demonstrated he would have folded the Served Warrant.

Plaintiffs testified in their depositions that the Served Warrant included a description of the items to be searched for and the place to be searched (the Sadlowskis' home) and they do not contest the adequacy of those descriptions. In their opposition to summary judgment, plaintiffs specifically denied that they were alleging that the affidavit submitted in support of the warrant application was "made-up or invalid." The record includes a copy of the application for the warrant to search the Sadlowski residence which is dated the day of the search and signed by Assistant Clerk Magistrate Raymond A. Salmon, Jr.[1] Plaintiffs have not argued that the application and affidavit in support thereof did not establish probable cause to search their home.[2]

Under these circumstances, the contested facts identified by plaintiffs, if proven, would not establish a violation of their Fourth Amendment rights. The lack of a signature on the Served Warrant would not render the search unconstitutional. See United States v. Lipford, 203 F.3d 259, 270 (4th Cir. 2000); United States v. Kelley, 140 F.3d 596, 602 n. 6 (5th Cir. 1998). The Fourth Amendment does not require that a search warrant "name the person from whom the things will be seized." Zurcher v. Stanford Daily, 436 U.S. 547, 555 (1978). Plaintiffs' contention that the defendant did not comply with Mass. Gen. Laws ch. 276, §3, prescribing the methods for issuance of a search warrant, is also insufficient to support a Fourth Amendment claim. See

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[1] The record does not include a copy of the supporting affidavit which was incorporated in the application.

[2] Plaintiffs' allegation that the affidavit in support of the search warrant was prepared after the search had been completed is entirely unsubstantiated.

White v. Olig, 56 F.3d 817, 820 (7th Cir. 1995). We conclude that there is no trialworthy issue as to this Fourth Amendment claim and, therefore, summary judgment was appropriate.

II. Dismissal of Claim that Officer's Threatening Manner Amounted to Constitutional Violation

Appellants challenge the grant of summary judgment on the claim that the "threatening manner" in which defendant conducted the search of Suzanne Sadlowski's bedroom violated her constitutional rights. Even assuming that defendant's summary judgment motion did not encompass this claim, "[i]t is apodictic that trial courts have the power to grant summary judgment sua sponte." Rogan v. Menino, 175 F.3d 75, 79 (1st Cir. 1999). Two conditions precedent must be satisfied before a trial court may enter summary judgment sua sponte: "(1) the case must be sufficiently advanced in terms of pretrial discovery for the summary judgment target to know what evidence likely can be mustered, and (2) the target must have received appropriate notice." Id. The ten-day notice requirement of Rule 56 applies to *sua sponte* grants of summary judgment. Id. at 80. "In the context of a *sua sponte* summary judgment, 'notice' means that the targeted party 'had reason to believe the court might reach the issue and received a fair opportunity to put its best foot forward.'" Leyva v. On the Beach, Inc., 171 F.3d 717, 720 (1st Cir. 1999) (citation omitted).

Here, both conditions precedent were satisfied. Discovery had been underway for more than a year when defendant moved for summary judgment. The plaintiffs were given notice as of the date of the magistrate judge's Report

and Recommendation (February 15, 2002) that the court was considering entering summary judgment as to the "threatening manner" claim. In their opposition to the Report, plaintiffs could have argued that there were disputed facts concerning that claim. Instead, they merely pointed out that defendant had not moved for summary judgment as to that specific claim. Summary judgment entered on March 1, 2002, more than ten days after plaintiffs had received notice. Therefore, the district court did not err in sua sponte entering summary judgment as to the claim contained in paragraph 6 of the amended complaint.[3]

Affirmed.

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[3] On the merits, appellants do not dispute the district court's ruling that their allegations "do not come close to establishing the type of conduct necessary to establish a constitutional violation, i.e., that Sgt. Benoit acted unreasonably." Instead, they argue only that defendant's conduct violated Mass. Gen. Laws ch. 12, §11i. "By the terms of the statute itself, a section 1983 claim must be based upon a *federal* right." Ahern v. O'Donnell, 109 F.3d 809, 815 (1st Cir. 1997).

APPENDIX E

AFFIDAVIT OF JOCELYN SADLOWSKI

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No: 98-40194

Michael Sadlowski	]	
Jocelyn Sadlowski	]	
Suzanne Sadlowski	]	
Plaintiffs	]	AFFIDAVIT OF
	]	JOCELYN
v	]	SADLOWSKI
	]	
Louis Benoit	]	
.Leominster Police Detective	]	
Defendant	]	
	]	

The document labeled search warrant that was shown at the 85 Harvard Street residence on August 23, 1996, had striking differences versus search warrant 9661SW-29 that is in the Leominster District Court Clerk's Office, like:

- the words "SEARCH WARRANT" were centered and in orange color,
- the section for the items to be searched for was in blue color;
- the form lettering was in black, (the form lettering on search warrant 9661SW-29 is in brown color),
- the name of Jeffrey Sadlowski was not on it,
- it did not have any signatures,
- the format was quite different

Signed under the pains and penalties of perjury, this 9th day of October in the year 2001.

Plaintiff pro se,

"s/Jocelyn Sadlowski"

Jocelyn Sadlowski
85 Harvard Street
Leominster, MA 01453
(978) 537-1891

(2) Supreme Court, U.S.
FILED

No. 05-831 NOV 18 2005

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL T. SADLOWSKI, JOCELYN M. SADLOWSKI
- PETITIONERS

vs.

LOUIS BENOIT - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE
FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI
SUPPLEMENTAL APPENDIX

Michael T. Sadlowski
85 Harvard Street
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Jocelyn M. Sadlowski
85 Harvard Street
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(978) 537-1891

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APPENDIX F

REPORT AND RECOMMENDATION BY MAGISTRATE JUDGE CHARLES SWARTWOOD III ON DEFENDANT BENOIT'S MOTION FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MICHAEL SADLOWSKI, JOCELYN SADLOWSKI and SUZANNE SADLOWSKI, Plaintiffs,	)	CIVIL ACTION NO. 98-40194-NMG
vs.	)	
LOUIS BENOIT, Defendant,	)	

REPORT AND RECOMMENDATION
February 15, 2002

SWARTWOOD, M.J.

Nature of the Proceeding

This matter was referred to me by Order of Reference dated August 3, 2001, for Findings and Recommendations pursuant to 28 U.S.C. §636(b) (1) (B) on Defendant, Benoit's Motion For Summary Judgment Pursuant To F.R.Civ.P. 56(C) (Docket No. 122).

Nature of the Case

Michael Sadlowski, Jocelyn Sadlowski and Suzanne Sadlowski, proceeding *pro se,* have filed an Amended Complaint (Docket No. 35) asserting claims against Sergeant Louis Benoit of the Leominster Police Department. Construing the Amended Complaint liberally, as I am

required to do, see Ashmond v. Rosenblatt, 118 F.3d 886, 890 (1st Cir. 1997), I find that the Plaintiffs are attempting to assert: federal claims against Sergeant Benoit for violation of the civil rights act, 42 U.S.C. § 1983, as a result of the alleged unlawful search of their residence and/or personal property, the resultant alleged unlawful arrest of Suzanne Sadlowski for possession of a controlled substance found during the search, and the alleged violation of Suzanne Sadlowski's constitutional rights by intimidating her during the search and failing to Mirandize her in connection with her arrest; and corresponding state civil rights claims and state law tort claims for intentional infliction of emotional distress; negligent infliction of emotional distress; invasion of privacy; and defamation (Suzanne Sadlowski).

Findings of Fact

1. On August 23, 1996, Sergeant Benoit executed a search warrant at 85 Harvard, Street Leominster, Massachusetts, where the Plaintiffs reside. Def., Benoit's Mem. of L. in Sup. of His Mot. for Sum. J. (Docket No. 123) ("Def's Mem."), Ex. B (Affidavit of Louis Benoit) ("Benoit Aff."), at ¶2. The search warrant was issued to Detective Siciliano of the Leominster Police department that same day. Pls' Amended Opp. To Def. Benoit's Mot. For Sum. J. (Docket No. 141) ("Pls' Opp."), at Ex. K.

2. At the time Sgt. Benoit executed the warrant he showed it to the persons on the premises, Jocelyn Sadlowski, Jeffrey Sadlowski and Suzanne Sadlowski. Benoit Aff., at ¶3.

3. After the search was completed, Detective Siciliano of the Leominster Police Department filled in the back of the search warrant indicating what items were seized, when the execution of the warrant took place and the time the warrant was executed. Id., at ¶4.

4. Detectives Siciliano and Plume both signed off on

the search warrant. Id., at ¶¶4, 5. Detective Siciliano then filed the warrant with the office of the clerk magistrate in the Leominster District Court. Id., at ¶5. The warrant filed in the Leominster District Court was assigned Docket No. 9661SW-29 ("Search Warrant"). See Pls' Opp., at Ex. O.

5. On February 20, 2001, Sergeant Benoit viewed the Search Warrant and determined that it was the same search warrant that he executed at the Sadlowski's residence on August 23, 1996. Benoit Aff., at ¶6.

6. Jocelyn Sadlowski and Suzanne Sadlowski have testified that they both saw the search warrant which Sgt. Benoit and other members of the Leominster Police Department executed at their residence. Both testified that the document that they were shown by Sgt. Benoit at that time of the search had the words "search warrant" centered at the top in orange letters. Pls' Opp., Ex B (Deposition of Jocelyn Sadlowski) (" J. Sadlowski Dep."), at p. 30-31; Ex. C (Deposition of Suzanne C. Sadlowski) ("S. Sadlowski Dep."), at p. 23. Both Jocelyn Sadlowski and Suzanne Sadlowski recalled that there was typewritten information in black ink on the document shown to them and Mrs. Sadlowski recalled some handwritten information in blue ink. Mrs. Sadlowski does not recall any signatures on the document shown to her or any boxes with check marks. Neither Mrs. Sadlowski nor Suzanne Sadlowski could recall the substance of the contents of the document shown to them, except that Mrs. Sadlowski testified that the document contained a description of what the police were looking for and Suzanne Sadlowski recalls seeing the word "marijuana". J. Sadlowski Dep., at pp. 31-33; S. Sadlowski Dep, at pp. 24 – 25.[1]

[1]In support of their contention that the search warrant executed by Sgt. Benoit on August 23, 1996 is not the same warrant that is on file at the Leominster District Court, the Plaintiffs have cited the affidavits of Jocelyn Sadlowski and Suzanne Sadlowski [(Docket Nos. 36 and 37) and Pls' Mem., Exs. D and E]. However, those affidavits are unsworn, that

7. The Search Warrant has the words "search warrant" off-center at the top in brownish letters, includes typewritten and handwritten information and is signed by Raymond Salmon Jr., as Assistant Clerk-Magistrate, and purports to be signed by the First Administrative Justice, "J.J. Curran Jr."[2] Pls' Mem., Ex. O (Copy of Search Warrant).

8. First Justice John Curran, Jr. of the Leominster District Court did not sign the Search Warrant, nor did he review it before it was issued. Pls' Opp., at Ex. N. However, it is common practice in the Leominster District Court to preprint or stamp the name of the presiding judge on search warrants, as a formality. Id.

9. The folds of the Search Warrant do not appear to match the folds in a paper made by Sgt. Benoit at his deposition when he was asked to fold such paper as he would have the search warrant executed at the Sadlowskis' residence on August 23, 1996. Id., Exs. R&S.

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is, they are not signed under the pains and penalties of perjury. Therefore, they cannot be considered for purposes of determining whether there is a genuine issue of material fact. Furthermore, Plaintiff, Michael Sadlowski, has filed an unsworn affidavit in support of the Plaintiffs' motion for summary judgment. Pls' Mem., Ex. G. For this same reason, that affidavit will not be considered. Carmona v. Toledo 215 F.3d 124 (1st Cir. 2000) (to be admissible at summary judgment stage, document must be sworn or certified).

[2]In support of their claim that the warrant is invalid, Plaintiffs assert that the Assistant Clerk-Magistrate's name, which is spelled out under his signature, is misspelled as "Salmun". Therefore, Plaintiffs argue, someone other than Mr. Salmon must have signed the document. This argument is specious. I have reviewed the document and disagree with the Plaintiffs' conclusion that the last name of the Assistant Clerk-Magistrate is spelled out "Salmun". On the contrary, comparing how the last name of the Assistant Clerk-Magistrate is spelled out to how his first name, Raymond (which also contains an "o"), is spelled out, it appears that the last name is correctly spelled as "Salmon", that is, what Plaintiffs have alleged to be a "u" in the last name is an "o".

10. When executing the warrant, Sgt. Benoit told Suzanne Sadlowski that he would tear her room apart. Amended Complaint, at ¶6. Sgt. Benoit dumped out Suzanne Sadlowski's cosmetics in front of her in her bedroom. Id., at ¶7.

11. The living room and kitchen of the Sadlowski residence were thoroughly searched, as was the bedroom and bedroom closet of Michael and Jocelyn Sadlowski. The house was a mess when Michael Sadlowski returned home from work on August 23, 1996. Id., at ¶¶8, 14.

12. Upon completing the search, the police arrested both Suzanne Sadlowski and Jeffrey Sadlowski. Suzanne Sadlowski, who at the time was a minor, was arrested for possession of marijuana after Jeffrey Sadlowski indicated that some marijuana found by the police belonged to her. Pl's Opp., Ex. V, at p. 30. Suzanne Sadlowski was not read her Miranda rights at the time of her arrest. Amended Complaint, at ¶12. Jeffrey Sadlowski pled guilty to possession of a Class D Substance with Intent to Distribute. Def's Mem., Ex. D. Suzanne Sadlowski's case was continued without a finding with no plea pursuant to Mass.Gen.L. ch. 276, §87. Pl's Opp., at Ex. J.

13. Michael Sadlowski and Jocelyn Sadlowski subsequently applied to the Leominster District Court for the issuance of a criminal complaint against Sgt. Benoit and others. Mr. and Mrs. Sadlowski sought a criminal complaint against Sgt. Benoit on the grounds that Sgt. Benoit had served an "invalid, non-official search warrant" for their residence and that he provided false information in the affidavit in support of the warrant. Jocelyn and Michael Sadlowski also filed a motion to have the search warrant declared invalid. Def's Mem., at Exs. C-1 and C-2. The Sadlowskis' applications for the issuance of criminal complaints against Sgt. Benoit and others were denied by the

Clerk Magistrate. Id., Ex. C-3. Justice Kilmartin of the Leominster District Court reviewed the Clerk Magistrate's denial of Mr. and Mrs. Sadlowski's applications for criminal complaints against Sgt. Benoit and others. After a hearing, in which Justice Kilmartin "heard all matters related to [the Sadlowskis'] requests for the issuance of process against various individuals and motions for specific relief", the Sadlowskis' applications for criminal complaints and their pending motions were denied. Id., at Ex. C-5. In refusing to overturn the Clerk Magistrate's decision, Justice Kilmartin agreed with the Clerk Magistrate's determination that there was insufficient evidence to support the issuance of a complaint against Sgt. Benoit. Id., at Ex. C-1.

Discussion
Plaintiffs' Federal Claims
Plaintiffs Section 1983 Claims For Invasion Of Privacy/Illegal Search

The Plaintiffs have not asserted any credible arguments that the Search Warrant is invalid.[3] Instead, the Plaintiffs argue that the document on file at the Leominster District Court is not the search warrant which Sgt. Benoit executed at their residence on August 23, 1996. Sgt. Benoit argues first, that there is no genuine issue of material fact that the document which is on file at the Leominster District Court is valid and is the search warrant executed at the

[3]The Plaintiffs assert that the search warrant on file at the Leominster district is invalid because although the signature of First Justice Curran appears on the document, he never personally signed it and because the Assistant Magistrate- Clerk's name is misspelled. I have previously addressed the latter argument. See note 2, *supra*. As to the former argument, Plaintiffs' own evidence establishes that search warrant's issued in the Leominster District Court are signed under First Justice Curran's name as a matter of formality and that doing so is not improper. See Pls' Opp., at Ex. N.

Sadlowski residence on August 23, 1996. Sgt. Benoit then argues that the Plaintiffs' Section 1983 claims against him for violation of their constitutional rights as the result of his search of their residence/personal property with an alleged invalid warrant are barred by principles of res judicata and/or collateral estoppel as the result of the state court proceedings against him initiated by Mr. and Mrs. Sadlowski. Initially, I will address Sgt. Benoit's argument that Plaintiffs claims are barred by principles of res judicata and/or collateral estoppel.

"Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgement, that decision may preclude a relitigation of the issue in a suit on a different cause of action involving a party to the first case... res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." Allen v. McCurry, 449 U.S. 90, 94, 101 S.Ct. 411, 415 (1980) (internal citations omitted). Furthermore, the rules of collateral estoppel apply to actions brought under Section 1983 and encompass civil or criminal matters determined in state courts. Id., at 105, 101 S.Ct. at 420. Where a party argues that a state court decision must be given preclusive effect in a subsequent federal action, state law determines whether principles of collateral estoppel bar the subsequent federal claim. Bilida v. McCleod, 211 F.3d 166, 170 (1st Cir. 2000).

Under Massachusetts law, "collateral estoppel precludes relitigation of issues determined in prior actions between the parties or those in privity with the parties. Issues precluded under this doctrine must have been actually litigated in the first action and determined by a 'final judgment on the merits'". Sena v. Commonwealth, 417 Mass. 250, 260 (1994). A "final judgment" is one that has been

appealed or as to which an "avenue for review" was available. Id. Initially, I will address whether collateral estoppel bars Mr. and Mrs. Sadlowski's Section 1983 claim against Sgt. Benoit. If I find that it does, I will then address whether privity existed between Mr. and Mrs. Sadlowski and Suzanne such that her claims are also barred.

In this case, subsequent to the search of their residence, Mr. and Mrs. Sadlowski filed an application for a criminal complaint against Sgt. Benoit, pursuant to Mass.Gen.L. ch 218, §32, 33 and 35 (see also Mass.Dist./Munic.Ct.R. 2 (b)), on the grounds that his alleged search of their residence pursuant to an invalid or non-official search warrant was illegal. The Sadlowskis also asserted that Sgt. Benoit had provided false information in the affidavit submitted in support of the issuance of a warrant for the search of their residence. Mr. and Mrs. Sadlowski had a hearing before a Clerk Magistrate who denied their application for a criminal complaint against Sgt. Benoit for insufficient evidence. The Clerk Magistrate's decision was reviewed by Justice Kilmartin, who after a full hearing, denied the Sadlowskis' request for issuance of criminal process against Sgt. Benoit and others and denied the Sadlowskis' motions for specific relief. Justice Kilmartin made his rulings on the ground that Mr. and Mrs. Sadlowski had presented insufficient evidence to warrant the issuance of a complaint against Sgt. Benoit. Clearly, the issues concerning the validity of the warrant raised by the Plaintiffs in their Section 1983 claim were necessarily addressed in the proceeding before Justice Kilmartin. That is, in denying Mr. and Mrs. Sadlowski's application for criminal complaint against Sgt. Benoit, Justice Kilmartin necessarily rejected their assertion that the Search Warrant was invalid and/or was not the one in the possession of Sgt. Benoit at the time of the search. The standard of proof in that proceeding, "probable cause", is virtually the same as the standard of proof which applies in this case, i.e., preponderance of the evidence. The issue now becomes whether there was a "final

judgment on the merits", that is, whether Mr. and Mrs. Sadlowski had a right to appeal the denial of their application for a criminal complaint against Sgt. Benoit.

Generally, a private citizen whose application for criminal complaint has been denied has no statutory or constitutional right to challenge the denial of such application. See Manning v. Municipal Court of Roxbury, 372 Mass. 315, 317 (1977). However, the Massachusetts Supreme Judicial Court ("SJC") has recognized that the Massachusetts District Court Department has provided a right of appeal to a complainant dissatisfied with a clerk's denial of his/her application for criminal complaint. Bradford v. Knights, 427 Mass. 748 (1998) (citing District Court Standard of Judicial Practice 3:21); see also Commonwealth v. Clerk of The Boston Div. of the Juvenile Court Dep't., 432 Mass. 693 (2000). In this case, Mr. and Mrs. Sadlowski appealed the Clerk Magistrate's denial of their application for the issuance of a criminal complaint against Sgt. Benoit and were provided a full hearing by the District Court Judge[4]. Under these circumstances, I find that the SJC would find that the "final judgment" prong of the collateral estoppel test has been met.[5] I will now address whether collateral estoppel

[4]In his written Memorandum of Decision, Justice Kilmartin states that "all parties were given full opportunity to present: [a] such oral testimony as the parties chose to introduce; [b] such exhibits as the parties chose to introduce; and [c] oral argument". Def's Mem., at Ex. C-5. Justice Kilmartin even permitted limited cross-examination of the witnesses. Id.

[5]Plaintiffs assert that Defendants have failed to establish that the validity of the search warrant was determined by Justice Kilmartin because Mr. Sadlowski remembers that at the hearing, Justice Kilmartin stated that he was not ruling on the motion to have the search warrant declared invalid (see Def's Mem., at Ex. C-2). Facts averred by a party